

September 14, 2005

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

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Seattle, Washington 98104
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REPORT AND RECOMMENDATION TO THE METROPOLITAN KING COUNTY COUNCIL

SUBJECT: Department of Transportation File No. **V-2507**
Proposed Ordinance No. **2005-0239**

CORNERSTONE HOMES AND DEVELOPMENT
Road Vacation Petition

Location: South 344th Street & South 346th Street

Petitioner: Cornerstone Homes and Development, *represented by*
Lisa Klein
AHBL
2215 North 30th Street, Suite 300
Tacoma, Washington 98043
Telephone: (253) 383-2422

King County: Department of Transportation, Road Services Division, *represented by*
Nicole Keller
201 S. Jackson Street
Seattle, Washington 98104-3856
Telephone: (206) 296-3731
Facsimile: (206) 296-0567

SUMMARY OF RECOMMENDATIONS:

Department's Preliminary:	Approve road vacation
Department's Final:	Approve road vacation
Examiner:	Approve road vacation

DEPARTMENT'S REPORT:

The Department of Transportation's written report to the King County Hearing Examiner for Item No. V-2507 was received by the Examiner on July 9, 2005.

PUBLIC HEARING:

After reviewing the Department of Transportation's Report and examining available information on file with the petition, the Examiner conducted a public hearing on the subject as follows:

The hearing on Item No. V-2507 was opened by the Examiner at 1:30 p.m., July 20, 2005, in the Hearing Examiner's Conference Room, 400 Yesler Way, Seattle, WA 98104, and closed on September 7, 2005 at 2:50. Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

FINDINGS, CONCLUSIONS & RECOMMENDATION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:

1. General Information:

Road name and location:	South 344 th Street and South 346 th Street
Right of way classification:	C
Area:	28,800 square feet
Compensation:	\$11,394.00

2. Except as provided below, the Examiner adopts and incorporates herein by this reference the facts set forth in the Department of Transportation's report to the King County Hearing Examiner for the July 20, 2005, public hearing and the statement of facts contained in Proposed Ordinance No. 2005-0239. The Department's report will be attached to those copies of this report and recommendation that are submitted to the Metropolitan King County Council.
3. Maps showing the vicinity of the proposed vacation and the specific area to be vacated appear in the hearing record as exhibit nos. 6 and 8.
4. The original petition contained a request for vacation of portions of South 342nd Street between 55th and 55th Avenues South. The owners of lots 4 and 6 within block 14, Plat of Jovita Heights, south of South 342nd Street objected to the vacation because they contend that the South 342nd Street right-of-way is necessary to access their currently undeveloped parcels which front onto the 55th Avenue South right-of-way. The Petitioner has withdrawn its request for the vacation of South 342nd Street, thus its future status is no longer subject to determination within this proceeding. The owners of lots 4 and 6 within block 14, while applauding the withdrawal of the section of 342nd Street from the petition, also want South 342nd Street "recorded as a permanent access for our lots" (exhibit no. 28). With the withdrawal of South 342nd Street from the vacation petition, no jurisdiction remains within this proceeding to affect South 342nd Street in any way whatever, and so this additional request must be denied.
5. The two remaining vacation areas lie directly west of a plat recently submitted within the City of Auburn (Auburn File No. PLT 04-0007) that received a recommendation for preliminary approval from the City's hearing examiner on August 2, 2005. Platted lots within the old Jovita Heights subdivision that lie in unincorporated King County adjacent to 56th Avenue South west of the new Auburn plat are also a part of the Petitioner's overall development proposal but are not scheduled for replatting. Portions of the two vacation rights-of-way plus adjacent segments of 55th Avenue South are encumbered by a large north-south wetland system within King County jurisdiction. A condition of the Auburn plat approval is that wetland alterations within the City will be mitigated by the preservation of Wetland A on the County portion of the development. This arrangement has created some complexities as to precisely how this outcome is to be achieved.

6. King County Roads Division's staff has been properly concerned that this process provide a seamless and comprehensive review of wetland protection requirements under the County's Critical Areas Ordinance and, more critically to this proceeding, that future options with respect to the Petitioners undeveloped lots within King County be circumscribed in a manner that assures that the requested vacation areas will not be required for future access in ways not anticipated by the current review. In addition to the large wetland identified above, this area is encumbered by steep slopes and a partially constructed and occasionally deficient road system with *de facto* cul-de-sacs exceeding County standards.
7. The parties have agreed that the Road Services Division's concerns regarding future circulation requirements in this neighborhood can be resolved if the Petitioner agrees to a covenant prohibiting construction on its lots fronting 55th Avenue South, and the Petitioner has stipulated to such a condition. With such a condition in place the potential need to reserve the vacated rights-of-way for future access to 55th Avenue South can be eliminated and the precise delineation of critical areas buffers along the eastern side of Wetland A can be deferred.

CONCLUSIONS:

1. The road subject to this petition is useless as part of the King County road system and the public will be benefited by its vacation.
2. The Notice of Hearing on the report of the Department of Transportation was given as required by law, and a hearing on the report was conducted by the King County Hearing Examiner on behalf of the King County Council.
3. The compensation required by law to be paid as a condition precedent to the vacation of this road has been deposited with King County, and the easements, if any, necessary for the construction, repair and maintenance of public utilities and services have been provided in form satisfactory to the affected public utilities. The Petitioner previously paid compensation for all three rights-of-way contained in its original petition, and with the withdrawal of South 342nd Street from the petition it is owed a refund of \$5,292.00.

RECOMMENDATION:

APPROVE proposed Ordinance No. 2005-0239, as amended, to vacate the described portions of South 344th and South 346th Streets, subject to the following pre-effective conditions:

1. Prior to conveyance of the vacation areas to the Petitioner, the Petitioner shall record a covenant, enforceable by King County and in a form approved by the County, on each of the lots it owns or controls located on the western half of blocks 14 (lots 2, 3, 5, and 7-15) and 24 (lots 1-4 and 6-14), Plat of Jovita Heights, that prohibits the construction or placement of structures on such lots.
2. Prior to conveyance of the vacation areas, and in the manner described above in condition no. 1, the Petitioner shall record a covenant providing that the lots owned or controlled by the Petitioner, either currently or in the future, located within Block 27 will have no direct access onto 55th Avenue South, but rather will be served by the future 56th Avenue South or the private access road shown on the preliminary plat.

3. The vacation area shall be conveyed to the Petitioner concurrently with the recording of a conservation easement and notices on title delineating and protecting Wetland A on the Petitioner's properties within the Plat of Jovita Heights, including the vacation areas, consistent with the requirements of the King County Critical Areas Ordinance. It shall also delineate and protect that portion of the Wetland A's buffer that falls within the western half of Petitioner's lots in blocks 14 and 24 as described above, and within the vacation areas. The conservation easement need not describe and contain the buffers on the eastern side of Wetland A except as may be required by the City of Auburn. The conservation easement shall be approved as to form by both King County and the City of Auburn.

RECOMMENDED this 14th day of September, 2005.

Stafford L. Smith
King County Hearing Examiner

TRANSMITTED this 14th day of September, 2005, to the following parties and interested persons:

Susan Burgemeister
B-Twelve Associates, Inc.
1103 W. Meeker St., Ste. C
Kent WA 98032-5751

Shahnaz & Abdul Chahim
6716 - 37th Ave. SW
Seattle WA 98126

Comcast
Attn: Kermit Benson
410 Valley Ave. NW, Bldg. C-
Puyallup WA 98371

Cornerstone Homes & Dev.
Attn: Lisa Klein
2215 N. 30th St., Ste. 300
Tacoma WA 98043

Don Dauphiny
Qwest Communications
1550 Newport Way NW
Issaquah WA 98027

Lakehaven Water & Sewer
31627 - 1st Ave S
Federal Way WA 98063

Puget Sound Energy
ATTN: Judy McCollum
411 - 108th Ave. NE
Bellevue WA 98009-9734

Boyd & Susan Watkins
804 SW 148th St.
Seattle WA 98166

Kim Claussen
DDES/LUSD
MS OAK-DE-0100

Clerk of the Council
MS KCC-CC-1025

Neil DeGoojer
DNRP/WLRD
MS KSC-NR-0600

Sarah Gagnon
DNRP - Wastewater Trtmt.
MS KSC-NR-0503

Nancy Gordon
KCDOT/D&C
MS KSC-TR-0431

David Gualtieri
KCDOT/CIP & Planning
MS KSC-TR-0317

Denise Hauck
KC Dept. of Exec. Svcs.
MS ADM-ES-0500

Bill Hintz
King Co. Dept. of
MS RSD-TR-0100

Nicole Keller
Vacations Engineer
Engineering Services Section
MS KSC-TR-0231

Kristen Langley
KC-DOT/RSD
MS KSC-TR-0222

Tom Lew
KC DNRP/WLRD
MS KSC-NR-0600

Paulette Norman
KCDOT/RD SERV.
MS KSC-TR-0231

Robert Nunnenkamp
KC Parks & Recreation
MS KSC-NR-0700

Lydia Reynolds-Jones
KC DOT/RD SERV.
MS KSC-TR-0231

Charlie Sundberg
BR&ED/Historic Pres.
MS KCC-EX-0402

Kelly Whiting
KC Rd. Svcs. Unit
MS KSC-TR-0231

NOTICE OF RIGHT TO APPEAL
AND ADDITIONAL ACTION REQUIRED

In order to appeal the recommendation of the Examiner, written notice of appeal must be filed with the Clerk of the King County Council with a fee of \$250.00 (check payable to King County Office of Finance) *on or before* **September 28, 2005**. If a notice of appeal is filed, the original and 6 copies of a written appeal statement specifying the basis for the appeal and argument in support of the appeal must be filed with the Clerk of the King County Council *on or before* **October 6, 2005**.

Filing requires actual delivery to the Office of the Clerk of the Council, Room 1025, King County Courthouse, 516 3rd Avenue, Seattle, Washington 98104, prior to the close of business (4:30 p.m.) on the date due. Prior mailing is not sufficient if actual receipt by the Clerk does not occur within the applicable time period. The Examiner does not have authority to extend the time period unless the Office of the Clerk is not open on the specified closing date, in which event delivery prior to the close of business on the next business day is sufficient to meet the filing requirement.

If a written notice of appeal and filing fee are not filed within 14 days calendar days of the date of this report, or if a written appeal statement and argument are not filed within 21 calendar days of the date of this report, the Clerk of the Council shall place a proposed ordinance which implements the Examiner's recommended action on the agenda of the next available Council meeting. At that meeting, the Council may adopt the Examiner's recommendation, may defer action, may refer the matter to a Council committee, or may remand to the Examiner for further hearing or further consideration.

Action of the Council Final. The action of the Council on a recommendation of the Examiner shall be final and conclusive unless within twenty-one (21) days from the date of the action an aggrieved party or person applies for a writ of certiorari from the Superior Court in and for the County of King, State of Washington, for the purpose of review of the action taken.

MINUTES OF THE JUNE 20 AND SEPTEMBER 7, 2005, PUBLIC HEARING ON DEPARTMENT OF TRANSPORTATION, ROAD SERVICES DIVISION FILE NO. V-2507.

Stafford L. Smith was the Hearing Examiner in this matter. Participating in the hearing were Nicole Keller, Kelly Whiting and Lydia Reynolds-Jones, representing the Department; Lisa Klein representing the Petitioner, and Susan Burgemeister.

The following exhibits were offered and entered into the record on June 20, 2005:

- | | |
|---------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Exhibit No. 1 | Report to the Hearing Examiner for the July 20, 2005 hearing, with 16 attachments |
| Exhibit No. 2 | Petition transmittal letter, dated July 14, 2004, to KC Department of Transportation, from Clerk of the Council |
| Exhibit No. 3 | Letter of explanation dated June 14, 2004 and Petition for Vacation of a County Road including legal descriptions of petitioner's properties with map attached |
| Exhibit No. 4 | Copy of filing fee – checks #602, 603 & 604 from the petitioners |
| Exhibit No. 5 | Vicinity map from Thomas Brothers, page 745 |

- Exhibit No. 6 Plat map of Jovita Heights
- Exhibit No. 7 Map depicting vacation area
- Exhibit No. 8 Letter of transmittal dated March 14, 2005
- Exhibit No. 9 Copy of compensation check with deposit receipt
- Exhibit No. 10 Letter dated January 4, 2005 to Lisa Klein identifying DOT recommendation and requesting compensation
- Exhibit No. 11 Compensation Worksheet
- Exhibit No. 12 Ordinance transmittal letter dated May 19, 2005 from King County Executive to Councilmember Larry Phillips
- Exhibit No. 13 Proposed Ordinance 2005-0239
- Exhibit No. 14 Fiscal Note
- Exhibit No. 15 Notice of hearing
- Exhibit No. 16 Affidavit of posting for hearing
- Exhibit No. 17 Transmittal letter dated February 4, 2005 to the Council providing recommendation of KCDOT and the County Road Engineer
- Exhibit No. 18 Affidavit of Publication
- Exhibit No. 19 Jovita Heights access plan
- Exhibit No. 20 Letter from Abdul and Shahnaz Chahim with attachments dated July 13, 2005
- Exhibit No. 21 Letter from Boyd and Susan Watkins dated July 5, 2005
- Exhibit No. 22 Map showing existing right-of-way vacation
- Exhibit No. 23 Wetland mitigation map

The following exhibits were offered and entered into the record on September 7, 2005:

- Exhibit No. 24 Jovita Heights maps
- Exhibit No. 25 Letter from City of Auburn dated August 4, 2005 with the Hearing Examiner's Findings, Conclusions and Recommendation; Wetland and Stream Analysis Report prepared by B-twelve Associates, Inc., dated February 11, 2005
- Exhibit No. 26 Illustration of the wetland buffers; Conservation Easement Agreement Form from the City of Auburn
- Exhibit No. 27 Revisions to the Staff Report and Recommendations
- Exhibit No. 28 Letter from Shahnaz and Abdul Chahim dated August 13, 2005
- Exhibit No. 29 Letter from Boyd and Susan Watkins dated September 5, 2005

The following exhibits were entered into the record on September 9, 2005:

- Exhibit No. 30 Letter from P. J. Dattilo of Cornerstone Homes & Development dated September 8, 2005, withdrawing the request to vacate South 342nd Street
- Exhibit No. 31 E-mail from Lisa Klein dated September 9, 2005 regarding conveyance of the rights-of-way